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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re  
EASTERDAY RANCHES, INC., *et al.*  
  
Debtors.<sup>1</sup>

EASTERDAY RANCHES, INC. and  
EASTERDAY FARMS,  
  
Plaintiffs,  
  
v.  
ESTATE OF GALE A. EASTERDAY  
(DECEASED), KAREN L. EASTERDAY,  
CODY A. EASTERDAY, AND DEBBY  
EASTERDAY,  
  
Defendants.

HONORABLE WHITMAN L. HOLT  
  
Hearing Date: December 21, 2021  
Hearing Time: 2:00 p.m. Pacific Time  
Location: Telephonic

Chapter 11  
Lead Case No. 21-00141-WLH11  
Jointly Administered

Adv. Pro. No. 21-80050 (WLH)

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' NOTICE AND  
MOTION TO DISQUALIFY  
PACHULSKI STANG ZIEHL &  
JONES LLP AND BUSH  
KORNFELD LLP AS COUNSEL  
FOR DEBTORS**

<sup>1</sup> The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141) and Easterday Farms, a Washington general partnership (21-00176).

1 Easterday Ranches, Inc. (“Ranches”) and Easterday Farms (“Farms”), the above-  
2 captioned debtors and debtors in possession (together, the “Debtors” or “Plaintiffs”),  
3 hereby file this opposition (the “Opposition”) to the *Motion to Disqualify Pachulski*  
4 *Stang Ziehl & Jones LLP and Bush Kornfeld LLP as Counsel for Debtors* [Adv. Pro.  
5 Docket No. 28] (the “Motion”), filed by Karen Easterday, individually and as the  
6 personal representative of the estate of Gale A. Easterday (“Defendant”), and  
7 respectfully state as follows:

8 **I.**

9 **PRELIMINARY STATEMENT**

10 Defendant does not like the truth of this case – that the Disputed Property, as  
11 defined in the Complaint, is in fact property of the Debtors’ estates under prevailing  
12 property law. In lieu of a legitimate substantive challenge to the Debtors’ message,  
13 Defendant has elected proverbially to kill the messenger. The Motion should be denied  
14 for the same reasons that the court denied the objection of the United States Trustee to  
15 the employment of Pachulski Stang Ziehl & Jones LLP and Bush Kornfeld LLP  
16 (together, the “Plaintiffs’ Counsel”) at the outset of the Chapter 11 cases – there is no  
17 actual conflict here. On the contrary, *both Debtors are collectively seeking identical*  
18 *relief* from Defendant in this adversary proceeding and neither are actively disputing  
19 title as between them. The only relief sought here vis-à-vis the Defendants is a  
20 determination that they do not in fact own the Disputed Property. Indeed, the Plaintiffs  
21 make this quite clear early in the Complaint:

22 By this Complaint, the Debtors seek a judicial determination and  
23 declaratory judgment that the proceeds of the Disputed Property belong  
24 solely to the Debtors’ estates. ***For the avoidance of doubt, the Debtors***  
25 ***do not seek by this Complaint an allocation of the proceeds of the***  
***Disputed Property as between the two Debtor estates.***

26 Complaint, Docket No. 1, ¶ 3 (emphasis added).

27 Rather than recognize this, Defendant postures in the Motion as if there is an  
28 active conflict between the estates with respect to property division. The Motion spends

1 page after page building up to a suggestion that the record makes their case (see pages  
2 2 and 3 therein) but offers nothing to actually *support* all of Defendant's ominous  
3 language. Defendant's line of argument is entirely false and there is no evidence to  
4 support it; there is no active dispute between the estates on this issue (or any other  
5 matter). The reason why they cannot offer any such evidence is because it does not  
6 exist. As has been reported to the court at recent status conferences in the chapter 11  
7 cases, far from a dispute, the two estates are on the verge of resolving all distribution  
8 issues together as between them.

9 It would be the height of absurdity to allow a defendant to hypothesize a dispute  
10 between two plaintiffs in order to challenge their use of a single set of counsels in such  
11 circumstances. Even if Defendant's counterclaims are taken at face value, the question  
12 of allocation as between Farms and Ranches is only relevant if and when Defendant  
13 defeats Plaintiffs' claims initiating this litigation. In other words, if it is determined that  
14 the Disputed Property is owned by the Easterdays and there is no estate interest, the  
15 potential conflict will never ripen into a disqualifying actual conflict.

16 It is strikingly obvious that Defendant has no substantive argument to defeat the  
17 Debtors' claims of ownership of the Disputed Property so instead Defendant<sup>2</sup> has turned  
18 to a scorched earth approach of requiring the displacement of current counsel and the  
19 retention of no less than two new sets of counsel for the Plaintiffs in this proceeding  
20 (replacing both Pachulski Stang Ziehl & Jones and Bush Kornfeld).<sup>3</sup> Remarkably,  
21 Defendant argues that not only must Plaintiffs' counsel be replaced but also that neither  
22 of the existing counsels for the Official Creditors Committees appointed in these cases  
23 can serve in a conflict counsel capacity. Thus, Defendant demands that each Committee

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24 <sup>2</sup> On December 17, 2021, defendants Cody and Debby Easterday filed their joinder to  
25 the Motion. It is unclear what force such a joinder has – *i.e.*, is it Cody and Debby's  
26 motion for similar relief? In any event, the Debtors oppose the Joinder as well to the  
27 extent the court considers it when ruling upon the Motion. *See* Adv. Pro. Docket No.  
28 31].

<sup>3</sup> Presumably, Defendant would require that Plaintiffs retain replacement financial  
advisors as well but the Motion is silent on this point.

1 obtain replacement counsel irrespective of cost – despite knowing full well that the  
2 estates are not only *not* conflicted but in whole-hearted agreement about the only issue  
3 germane to this adversary proceeding: that the Easterdays are not proper owners of the  
4 Disputed Property.

## 5 II.

### 6 **FACTUAL BACKGROUND**

#### 7 **A. The Filing of the Complaint, Answer and Counterclaims**

8 On September 22, 2021, the Debtors initiated this adversary proceeding with the  
9 filing of the Complaint. The Complaint arose of out facts and information collectively  
10 uncovered by the estates showing that under prevailing law, the Disputed Property is –  
11 and likely always has been – property of the Debtors and hence is now property of these  
12 estates. Nothing in the Complaint requires a judicial determination of ownership issues  
13 as between the two Debtors. On the contrary, paragraph 3 of the Complaint makes clear  
14 that no such determination is sought in this proceeding.

15 On November 17, 2021, Defendant filed her answer to the complaint and  
16 counterclaims against the Debtors (the “Defendant’s Answer”) [Adv. Pro. Docket No.  
17 14]. Nothing in the Defendant’s Answer – at least nothing germane to the Complaint –  
18 requires a judicial determination of ownership as between the two estates. In response,  
19 on December 8, 2021, the Debtors filed their answer to the counterclaims (the  
20 “Plaintiffs’ Answer”). As with the Defendant’s Answer, nothing the in the Plaintiffs’  
21 Answer raises any issues of ownership as between the two estates.

22 Nearly three (3) months after the Complaint was filed, Defendant filed the  
23 Motion at issue – now raising for the first time the prospect of an “actual” conflict.

#### 24 **B. The Motion Cites Nothing in the Factual Record to Support its Argument**

25 The Motion spends substantial time implying and suggesting that – somehow –  
26 the court should see a dispute that simply is not there. Much is made by Defendant of  
27 the fact that Plaintiffs’ counsel acknowledged that in the event of an *actual* conflict,  
28 counsels to each of the Creditors’ Committees could serve in a conflict counsel-type

1 capacity. *See* Motion, p. 2. However, later, Defendant goes on to argue that in fact  
2 neither Creditors' Committee counsel could do so because they are also hopelessly  
3 disqualified on the grounds that they are duty-bound to their respective general  
4 unsecured creditor constituencies and cannot proceed in light of the alleged "dispute."

5 The problem, of course, is that there is no such actual dispute in the first place.  
6 The Motion does not provide any such evidence. Neither of the Creditors' Committees  
7 has suggested any such dispute has ripened. The record is in fact replete with evidence  
8 of ongoing cooperation as between the two estates; so much so, in fact, that the Debtors  
9 have recently reported being on the brink of a comprehensive solution which the  
10 Easterday family will not endorse.

### 11 III. 12 ARGUMENT

#### 13 A. Lack of Actual Adversity

14 The phrase "adverse interest" is not defined in the Bankruptcy Code, *Tevis v.*  
15 *Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 688 (9th Cir.  
16 BAP 2006), but

17 "the generally accepted definition of 'adverse interest' is the  
18 (1) possession or assertion of an economic interest that would  
19 tend to lessen the value of the bankruptcy estate; or (2)  
20 possession or assertion of an economic interest that would  
21 create either an actual or potential dispute in which the estate  
22 is a rival claimant; or (3) possession of a predisposition under  
23 circumstances that create a bias against the estate."

24 *Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139, 148–49 (9th Cir. BAP 2006). To  
25 represent an adverse interest means to serve as an attorney for a party who holds an  
26 adverse interest. *Tevis*, 347 B.R. at 688.

27 In determining whether a conflict exists, "[s]tate rules of professional  
28 responsibility apply, as long as they do not conflict with the Bankruptcy Code and/or

1 the Bankruptcy Rules.” *Won Ho Song v. Ehrenberg (In re Won Ho Song)*, 2008 Bankr.  
2 LEXIS 4725, \*11 (9th Cir. BAP Feb. 12, 2008).

3 Washington’s Rules of Professional Conduct provide as follows, in pertinent  
4 part:

5 (a) Except as provided in paragraph (b), a lawyer shall  
6 not represent a client if the representation involves a  
7 concurrent conflict of interest. A concurrent conflict of  
8 interest exists if:

9 (1) the representation of one client will be directly  
10 adverse to another client; or

11 (2) there is a significant risk that the representation of  
12 one or more clients will be materially limited by the lawyer’s  
13 responsibilities to another client, a former client or a third  
14 person or by a personal interest of the lawyer.

15 (b) Notwithstanding the existence of a concurrent  
16 conflict of interest under paragraph (a), a lawyer may  
17 represent a client if:

18 (1) the lawyer reasonably believes that the lawyer will  
19 be able to provide competent and diligent representation to  
20 each affected client;

21 (2) the representation is not prohibited by law;

22 (3) the representation does not involve the assertion of  
23 a claim by one client against another client represented by the  
24 lawyer in the same litigation or other proceeding before a  
25 tribunal; and

26 (4) each affected client gives informed consent,  
27 confirmed in writing (following authorization from the other  
28 client to make any required disclosures).

R.P.C. 1.7.

Notably, the R.P.C. does not prohibit the concurrent representation of clients  
where there is a potential conflict of interest.

1           The case *In re O.P.M. Leasing, Inc.*, 16 B.R. 932 (Bankr. S.D.N.Y. 1982), is  
2 directly on point. In *OPM Leasing*, the trustee and his counsel represented debtors in  
3 possession in five separate, but related, Chapter 11 reorganizations. The Chapter 7  
4 trustee in a related case moved to disqualify both the trustee and his attorneys on the  
5 grounds of conflict of interest. The court specifically addressed two questions:

6           1. Whether the existence of an inter-company claim between  
7 a subsidiary and parent corporation as separate reorganization  
8 cases, prohibited appointment of the same trustee in both  
9 cases or constituted grounds for his removal from one of the  
10 appointments, and

11           2. Where a single trustee is presiding over related  
12 corporations in separate reorganizations with potential for  
13 recovery of property not clearly earmarked to either estate, is  
14 there a conflict that requires separate administration and  
15 disqualification of trustee's counsel from representation of  
16 either estate in litigation commenced to establish the trustee's  
17 ownership.

18           16 B.R., at 934–41.

19           Relying on *In re International Oil Co.*, 427 F.2d 186 (2d Cir.1970), the first  
20 question was answered in the negative. At least part of the rationale appears to be the  
21 feeling the gravity of the conflict did not justify saddling the estates with the expense  
22 of separate trustees and counsel. 16 B.R., at 939–40. In addressing the second question,  
23 the court noted the estates had an actual unity of interest in recovering the property in  
24 question. An actual conflict would arise only in the event the trustee was successful in  
25 recovering the property. The court felt that this conflict, should it arise, might be  
26 resolved in a number of ways, including the court structuring the adversary proceeding  
27 with case management procedures to minimize the opportunity for the premature  
28 realization of potential conflicts and/or the appointment of special counsel. *Id.* at 940–  
41.



1 The court thus adopted a “wait and see” attitude, recognizing that acting in a pre-  
2 emptive manner could disrupt the orderly administration of the estates involved. *See*  
3 *also Katz v. Kilsheimer*, 327 F.2d 633, 635–36 (2d Cir. 1964); *In re General Coffee*, 39  
4 B.R. 7, 8 (Bankr. S.D. Fla. 1984). In addition to the possible effect that disqualification  
5 would have upon the various estates, the *OPM* case also points out concern with the  
6 timing of the application for disqualification. It is clear the court considered the motion  
7 for disqualification to be, in part, a tactical device. 16 B.R. at 938–39.

8 *OPM Leasing* is instructive. Here, the issue on which there is a potential conflict  
9 – the inter-debtor allocation of assets between Farms and Ranches – is only potentially  
10 in play if and when the substance of Defendant’s counterclaims with respect to the  
11 Disputed Property become an issue. Thus, at least until it is established that the  
12 Disputed Property is deemed to be property of the estates, there is no need to bring in  
13 replacement counsel and thereby incur additional costs and delay getting up to speed on  
14 the complex facts and legal issues – and only then if and when it ripens into an actual  
15 dispute. Moreover, if it is determined that the disputed assets are owned by the  
16 Easterdays and there is no estate interest, the potential conflict will never ripen into a  
17 disqualifying actual conflict.

18 **B. Cost and the Availability of Committee Counsel**

19 Not only is representation of multiple-debtor cases by a single law firm common-  
20 place; it is generally the most efficient and effective way to administer cases. *See, e.g.,*  
21 *In re BH & P Inc.*, 949 F.2d 1300, 1310 (3d Cir. 1991). Thus, to conserve estate assets,  
22 courts will permit multiple-debtor representation but also evaluate the facts surrounding  
23 the representation to protect the integrity of the bankruptcy process. *In re Global*  
24 *Marine, Inc.*, 108 B.R. 998 (Bankr. S.D. Tex. 1987) (counsel permitted to represent  
25 debtor and its subsidiaries in consolidated chapter 11 case in which debtors functioned  
26 as one enterprise that operated for the benefit of the whole and in which there existed a  
27 unity of interest and singleness of purpose on debtors’ part). Even when there are inter-  
28 company claims, as here, it is standard practice to allow multi-debtor representation



1 such that estate assets may be conserved. *See, e.g., In re Int'l Oil Co.*, 427 F.2d 186,  
2 187 (2d Cir. 1970) (the existence of intercompany claims by itself was not a basis “to  
3 saddle these estates with the expense of separate trustees and trustees’ attorneys”); *In*  
4 *re Guy Apple Masonry Contractor, Inc.*, 45 B.R. 160, 166 (Bankr. D. Ariz. 1984) (“For  
5 example, the existence of inter-company claims may not warrant the disqualification of  
6 trustee or counsel representing related Chapter 11 corporations.”); *In re O.P.M. Leasing*  
7 *Serv., Inc.*, 16 B.R. 932 (Bankr. S.D.N.Y. 1982) (declining to remove trustee from  
8 stewardship of consolidated bankruptcy proceedings of debtors despite existence of an  
9 inter-debtor claim). Additionally, “[h]orrible imaginings alone cannot be allowed to  
10 carry the day. Not every conceivable conflict must result in sending counsel away to  
11 lick his wounds.” *In re Stamford Color Photo*, 98 B.R. 135, 138 (Bankr. D. Conn. 1989)  
12 (internal quotation omitted).

13 Here, the cost of replacement counsel sought by Defendant would be  
14 overwhelming. Arguably, Defendant’s approach would require not only the  
15 replacement of Plaintiffs’ counsel, but replacement of their restructuring officers and  
16 financial advisors as well, not to mention the use of wholly new professionals in lieu of  
17 Committee counsel. New counsel would easily spend hundreds of thousands of dollars  
18 merely reviewing the thousands of documents, a process current Plaintiffs’ counsel has  
19 already undertaken. Plaintiffs have calculated these potential expenses and  
20 *conservatively* estimate the added cost of these changes would be well over \$1 million,  
21 which would be an enormous expense to address what amounts to no more than an  
22 unripened conflict. Defendant should not be granted the power to pick and choose  
23 counsel bringing claims against her nor the power to dictate what issues are germane to  
24 the Complaint. It would cause immeasurable interruption – and require substantial  
25 additional cost – to these estates were the court to abide by the Defendant’s wishes.  
26  
27  
28

1 IV.

2 CONCLUSION

3 For the reasons set forth herein, Plaintiffs respectfully request that the court deny  
4 the Disqualification Motion.

5  
6 Dated: December 21, 2021 BUSH KORNFELD LLP

7 /s/ Thomas A. Buford, III

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